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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/480,883	01/10/2000	SCOTT T. ALLAN	40116/05502	4877

30636 7590 06/12/2008  
FAY KAPLUN & MARCIN, LLP  
150 BROADWAY, SUITE 702  
NEW YORK, NY 10038

EXAMINER
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CHAMPAGNE, LUNA

ART UNIT	PAPER NUMBER
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3627

MAIL DATE	DELIVERY MODE
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06/12/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* SCOTT T. ALLAN,  
JEFFERY T. MILES, J. GREG STOUT,  
AZIZ VALLIANI, ABBAS RAFII  
and  
NAZIM KAREEMI

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Application 09/480,883  
Technology Center 3600

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Mailed: June 12, 2008

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Before DALE M. SHAW, *Chief Appeals Administrator*.

SHAW, *Chief Appeals Administrator*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received at the Board of Patent Appeals and Interferences on May 28, 2008. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matters requiring attention prior to docketing.

APPEAL BRIEF

37 CFR § 41.37 (2007) states in part:

(c)(1) The brief shall contain the following items under appropriate headings and in the order indicated in paragraphs (c)(1)(i) through (c)(1)(x) of this section, except that a brief filed by an appellant who is not represented by a registered practitioner need only substantially comply with paragraphs (c)(1)(i) through (c)(1)(iv) and (c)(1)(vii) through (c)(1)(x) of this section:

. . . .

(ii) *Related appeals and interferences.* A statement identifying by application, patent, appeal or interference number all other prior and pending appeals, interferences or judicial proceedings known to appellant, the appellant's legal representative, or assignee which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal. Copies of any decisions rendered by a court or the Board in any proceeding identified under this paragraph must be included in an appendix as required by paragraph (c)(1)(x) of this section.

An examination of the Image File Wrapper (IFW) reveals that an Appeal Brief was filed on January 29, 2008. The Appeal Brief does not contain a statement regarding Application Serial No. 09/588,589<sup>1</sup> and Application Serial No. 09/588,037.<sup>2</sup> It is noted that while both of these

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<sup>1</sup> Application Serial No. 09/588,589, filed on June 5, 2000, is a division of the present application.

<sup>2</sup> Application Serial No. 09/588,037, filed on June 5, 2000, is a continuation-in-part of the present application.

applications contain Appeal Briefs and Examiner's Answers,<sup>3</sup> no decisions by the Board of Patent Appeals and Interferences have been rendered to date.

In addition, claims 59 and 60 were cancelled pursuant to the Amendment filed October 24, 2006. However, both of these claims have been included in the "Ground of rejection" and "Argument" sections appearing on pages 3-9. It is also noted that the "Conclusion" located on page 10 appears to be totally unrelated to the present application. Correction is required.

### REPLY BRIEF

A Reply Brief was filed on May 27, 2008, in response to the Examiner's Answer mailed April 8, 2008. However, there is no indication in the record regarding whether or not the examiner has considered the Reply Brief. Section 41.43 (2007) of the Code of Federal Regulations (CFR) states:

(a)(1) After receipt of a reply brief in compliance with § 41.41, the primary examiner must acknowledge receipt and entry of the reply brief. In addition, the

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<sup>3</sup> Application Serial No. 09/588,037 also contains a Reply Brief.

primary examiner may withdraw the final rejection and reopen prosecution or may furnish a supplemental examiner's answer responding to any new issue raised in the reply brief.

Correction is required.

Accordingly, it is

ORDERED that the application is returned to the Examiner:

- 1) for notification to appellants to submit a revised Appeal Brief which corrects the "Related appeals and interferences," "Grounds of rejection," "Argument" and "Conclusion" sections appearing on pages 3-10 of the Appeal Brief filed January 29, 2008;
- 2) for consideration of said revised Appeal Brief;
- 3) for written notification to appellants regarding consideration of the Reply Brief filed May 27, 2008; and
- 4) for such further action as may be appropriate.

DMS:psb

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